



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

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IB INVITES COMMENT FOR ANNUAL REPORT TO CONGRESS ON STATUS OF COMPETITION IN THE SATELLITE SERVICES MARKET

IB Docket No. 06-67

Comments Due: April 19, 2006

Reply Comments Due: May 4, 2006

In July 2005, Congress adopted and President Bush signed into law an Act¹ "to amend the Communications Satellite Act of 1962 to strike the privatization criteria for Intelsat separated entities, remove certain restrictions on separated and successor entities to Intelsat and for other purposes."²

Section 4 of the Amendment Act requires the Commission to submit to Congress an annual report ("Satellite Competition Report") that analyzes the competitive market conditions with respect to domestic and international satellite communications services.³ Congress further stated that the Commission include in this report:

- (1) an identification of the number and market share of competitors in domestic and international satellite markets;*
- (2) an analysis of whether there is effective competition in the market for domestic and international satellite services; and*
- (3) a list of any foreign nations in which legal or regulatory practices restrict access to the market for satellite services in such nation in a manner that undermines competition or favors a particular competitor or set of competitors.⁴*

This *Public Notice* solicits data and information in order to evaluate the state of competition in markets for domestic and international satellite services. The statute requiring the Commission to submit annual reports stipulates that the report shall include, among other things, identification of the number and

¹ Communications Satellite Act—Amendment, Pub. L. No. 109-34, 119 Stat. 377 (2005) ("Amendment Act"). The Amendment Act amended the Communications Satellite Act of 1962, 47 U.S.C. § 701 *et seq.*

² Preamble, Amendment Act.

³ Amendment Act, § 4(a).

⁴ *Id.* at § 4(b)(1)-(3).

market share of competitors and a determination of whether there is effective competition in the market for domestic and international satellite services.⁵

The International Bureau (the Bureau) seeks to collect indicators of competition and to determine whether or not there is effective competition in the markets for domestic and international satellite services. The Bureau invites public input to facilitate this determination. Industry members, members of the public, and other interested parties should provide information, comments, and analyses regarding competition in the provision of satellite services. In order to facilitate an analysis of competitive trends over time, parties should provide current data as well as historic data that are comparable over time. Commenters desiring confidential treatment of their submissions should request that their submission, or a specific part thereof, be withheld from public inspection.⁶

The Bureau intends to adapt for this report an approach and format similar to the competition reports compiled by the Commission to evaluate competition in the video services and commercial mobile radio services (CMRS) markets.⁷ In our competition analysis, therefore, we intend to follow a “structure-conduct-performance” framework. The Bureau seeks both qualitative and quantitative data pertaining to indicators in the following four categories: (1) market structure; (2) conduct; (3) consumer behavior; and (4) market performance. The Bureau also seeks comment on which indicators are useful for analyzing competitive market conditions with respect to domestic and international satellite services, and on what specific criteria should be used to determine whether there is effective competition in the relevant markets.

I. Satellite Communications Services Market Structure

The Bureau’s analysis of market structure will examine the degree of market concentration and the ease of entry and exit from satellite communication services markets. A meaningful market structure analysis entails defining relevant geographic and product markets. The Bureau proposes to define the relevant geographic and product markets based on the type of service provided. Specifically, we propose that the relevant product markets include satellite markets delineated by the following types of service: (1) Video Services; (2) Audio Services; and (3) Telecommunications Services.

- The Video Services satellite product market would include video distribution via satellite, video contribution and occasional use satellite services, and direct-to-consumer video services.
- The Audio Services satellite product market would include audio/radio distribution via satellite, audio/radio contribution and occasional use satellite services, and direct-to-consumer audio/radio services.
- The Telecommunications Service satellite product market would include fixed telecommunications and carrier services via satellite, mobile telecommunications services, narrowband/VSAT/private network services, and direct-to-consumer broadband/Internet services via satellite.

⁵ *Id.* at §4(b)(1)-(2).

⁶ 47 C.F.R. § 0.459.

⁷ See, e.g., *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, Twelfth Annual Report (adopted February 10, 2006); *Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 05-71, Tenth Report, (adopted September 26, 2005).

The Bureau invites commenters to address our proposed definitions for the relevant product markets for this report. Are there other services that justify a separate product market? Should we define the product markets based on different criteria? For example, should the relevant product markets be based on satellite frequency band assigned or orbital configuration (e.g., geostationary orbits vs. non-geostationary orbits), rather than by type of service provided?

We also invite comment on geographic markets based on the Commission's regulatory oversight. We define geographic markets as follows: (1) Domestic markets (services provided within the U.S.); (2) International markets (services provided to and from the U.S.); and (3) Foreign markets (services provided from overseas locations to other overseas locations). We seek comments on our definition of the geographic markets.

The Bureau asks commenters to address the sources of data and the analysis related to specific aspects of market structure listed in the following subsections.

A. Market Participants

The Bureau seeks information on the number of firms in each relevant product and geographic market. We also seek information concerning the types and number of buyers of services (including both number of firms and number of subscribers) in each product and geographic market.

B. Horizontal Concentration

The Bureau seeks information concerning sales (revenues by product) and capacity data (number of available transponders, number of transponders used or other capacity measures) by participants in each product and geographic market. The Bureau also seeks information on market shares based on the number of subscribers or customers served by each market participant (firms). Are there any other reasonable measures of market shares, and if so, what are they?

C. Market Entry Conditions

The Bureau invites comment on market entry conditions in each product and geographic market. Specifically, the Bureau seeks information on cost structures in each relevant market, especially information on the presence of large sunk costs that would influence the ease of market entry and exit.

The Bureau also invites comments on barriers to entry in the relevant satellite communications services markets. Barriers to entry may include, but may not be limited to, first-mover advantages, spectrum allocation, and the allocation of orbital locations, as well as effects of regulation and policies of governments. The Bureau seeks information on these and other types of barriers to entry in all relevant satellite communications services markets. What are the most significant barriers to entry today in the satellite communications services industry?

The Bureau invites comment on whether inability to access spectrum is a barrier to entry in the satellite communications services industry. Are existing service providers spectrum constrained? If so, in which geographic markets are firms most likely to be constrained? Have these service providers become more spectrum constrained after rolling out advanced services like high-speed Internet access and High Definition Digital Television? Do potential entrants have sufficient opportunities to access spectrum and orbital locations? Are there other barriers that limit access to spectrum?

D. Market Consolidation

The Bureau invites comment on the effects of market consolidation on the satellite services industry. Are the effects of consolidation different for mergers and acquisitions, swaps, joint ventures, and bankruptcies? Has consolidation affected the video and audio services market differently than, say, the telecommunications services market? Has consolidation affected rural areas differently than urban areas?

II. Market Satellite Communications Services Market

A. Price Rivalry

The Bureau seeks information on pricing plans that include price per transponder or portion thereof (transponder lease rates or satellite capacity sales prices) by the relevant markets listed above. What distinct characteristics, if any, affect the pricing practices observed in the satellite services industry? To what extent do pricing plans reflect price rivalry among firms? In addition, the Bureau invites comment on the extent to which satellite firms in their pricing plans differentiate between different types of satellite communications services. Do satellite firms offer short-term or long-term pricing plans? To what extent is transponder pricing determined by bilateral negotiations between satellite service providers and their customers?

B. Non-Price Rivalry

The Bureau seeks information regarding any non-price rivalry among satellite firms, especially competition based on quality differences. To what extent do communications satellite operators invest in research and development to gain competitive advantage? What is the level of capital expenditures by satellite firms? Have capital expenditures by satellite firms increased (or decreased) in the last five years? How important is capacity expansion to the competitive strategies of communications satellite operators? Are there any studies or analyst reports on the capital expenditures of domestic versus international satellite firms? Have any satellite firms adopted new marketing strategies in last five years?

C. Consumer Behavior

The Bureau invites comment on the development of consumer information sources for satellite communications services. Are there new avenues for consumers to gain information, such as retailers providing on-line and in-store comparisons of pricing plans, services, and equipment? How often do consumers/buyers switch firms providing satellite communications services (i.e., what is the level of "churn" in the various relevant markets and is it increasing or decreasing)? If there is a significant churn/switching by consumers/buyers, is this in response to price differences, coverage, and/or quality of service differences? To what extent can buyers exercise buyer power in communications satellite service markets? What is the extent and effect of aggregators on the price and other terms and conditions of communications satellite services?

III. Satellite Communications Services Market Performance

The Bureau intends to analyze various market performance metrics including pricing levels and trends, subscriber growth and penetration, innovation and diffusion of services, and quality of service.

Specifically, the Bureau seeks 5-year time-series data on revenues, profitability, cash flows, and cash-flow margins for the relevant satellite communications services markets.

Are there any other metrics that would add significantly to the Bureau's analysis of these markets? Are these metrics available on a national or international level, and are they available for a 5-year time period?

IV. Access To Foreign Markets

The Bureau also seeks information on the legal or regulatory practices of foreign nations which have the effect of restricting access to that nation's market for satellite services. What types of legal or regulatory practices hinder U.S. firms from fully participating in a given foreign market? Are there foreign legal or regulatory practices that favor a particular competitor or set of competitors?

V. Procedural Matters

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.

For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Patricia Cooper, International Bureau, (202) 418-2150.